

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Kingsley Palmer and Sharon Palmer,
Plaintiffs,
-against-

**DECLARATION OF JAMES
R. MURRAY IN SUPPORT
OF CITY DEFENDANTS'
MOTION TO DISMISS**

19 CV 5542 (RPK)(CLP)

City of New York, Inspector Elliot Colon, Police Officer Luis Ramos, Police Officer Nicholas Cardieri, Police Officer Adam Giacalone, Stephen Samuel Weintraub, E 40 Buyers IG LLC, Reggie (AKA Frank Singh),

Defendants.

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JAMES R. MURRAY, an attorney duly admitted to practice in the Eastern District of New York, declares, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the following is true and correct:

1. I am an Assistant Corporation Counsel in the office of James E. Johnson, Corporation Counsel of the City of New York, attorney for Defendants City of New York, Inspector Elliot Colon, and Police Officer Luis Ramos (“City Defendants”). As such, I am familiar with the facts set forth below based upon personal knowledge, the books and records of the City of New York, and conversations with its agents and employees.
2. This declaration is submitted in support of City Defendants’ motion for to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.
3. Attached hereto as Exhibit “A” is a true and accurate copy of Plaintiffs’ Complaint dated October 1, 2019, in which they bring claims under 42 U.S.C. § 1983, alleging, *inter alia*, deprivation of property without due process, violation of an automatic bankruptcy stay provision, federal and state law false arrest, federal and state conspiracy, and municipal liability.

4. Attached hereto as Exhibit "B" is a true and accurate copy of Plaintiffs Amended Complaint, dated September 12, 2020, in which they named an additional two police officers as defendants and asserted additional claims for assault and battery, conversion, and state and federal malicious prosecution.

5. Attached hereto as Exhibit "C" is a true and accurate copy of Plaintiffs' mortgage agreement showing that, on April 18, 2008, Plaintiffs obtained a \$325,000 mortgage to finance the purchase of the property located at 891 E. 40 Street, Brooklyn, New York 11210 ("The Property").

6. Attached hereto as Exhibit "D" is a true and accurate copy of the Summons and Complaint filed in the foreclosure action ("Foreclosure Proceeding") brought by Plaintiffs' mortgage lender against Plaintiffs on December 23, 2013.

7. Attached hereto as Exhibit "E" is a true and accurate copy of the Judgment of Foreclosure entered in Plaintiffs' Foreclosure Proceeding, which demonstrates that The Property was foreclosed upon on March 6, 2018.

8. Attached hereto as Exhibit "F" is a true and accurate copy of the Report of Sale at Public Auction entered in Plaintiffs' Foreclosure Proceeding, which states that Defendant E 40 Buyers IG LLC ("E 40") purchased The Property at public auction on May 24, 2018.

9. Attached hereto as Exhibit "G" is a true and accurate copy of the Deed to The Property, which indicates that title to The Property transferred from Plaintiffs to Defendant E 40 on July 24, 2018.

10. Attached hereto as Exhibit "H" is a true and accurate copy of the Summons and Complaint dated June 27, 2018, which demonstrates that Plaintiffs instituted a vacatur action

against Defendant E 40 in an attempt to vacate the Judgment of Foreclosure and Sale entered in their Foreclosure Proceeding.

11. Attached hereto as Exhibit "I" is a true and accurate copy of the Decision and Order filed on November 29, 2019 in Plaintiffs' vacatur action dismissing the case against Defendant E 40.

12. Attached hereto as Exhibit "J" is a true and accurate copy of the Decision and Order filed in Plaintiffs' holdover proceeding ("The Holdover Proceeding") on February 28, 2019, showing that, after a trial in which Plaintiffs again challenged the validity of the transfer of The Property, The Honorable Judge Jeannine B. Kuzniewski awarded Defendant E 40 possession of The Property and a warrant of eviction against Plaintiffs.

13. Attached hereto as Exhibit "K" is a true and accurate copy of the order dated May 17, 2019, which extended the stay of the warrant of eviction against Plaintiffs until June 5, 2019 and was the last document filed in The Holdover Proceeding.

14. Attached hereto as Exhibit "L" is a true and accurate copy of the Order to Show Cause issued in Plaintiffs' Foreclosure Proceeding on May 20, 2019, which stayed all further proceedings in The Holdover Proceeding.

15. Attached hereto as Exhibit "M" is a true and accurate copy of the Bankruptcy Petition filed by Plaintiff Kingsley Palmer on June 20, 2019 in the Bankruptcy Court of the Eastern District of New York, which does not list The Property as part of Plaintiff Kingsley Palmer's bankruptcy estate.

16. Attached hereto as Exhibit "N" is a true and accurate copy of Plaintiff Kingsley Palmer's Motion to Extend the Automatic Stay applicable to parties declaring bankruptcy, filed

June 20, 2020 in the Bankruptcy Court of the Eastern District of New York and which does not list The Property as part of Plaintiff Kingsley Palmer's bankruptcy estate.

17. Attached hereto as Exhibit "O" is a true and accurate copy of the Notice of Deficient Filing, entered in Plaintiff Kingsley Palmer's bankruptcy case on June 21, 2019, which states that Plaintiff Kingsley Palmer's initial bankruptcy filing was deficient because, among other reasons, he failed to include a list of the property comprising his bankruptcy estate.

18. Attached hereto as Exhibit "P" is a true and accurate copy of the Civil Docket in Plaintiff Kingsley Palmer's bankruptcy case, which shows that, on June 27, 2019, the only documents that had been filed were the Bankruptcy Petition, the Motion to Extend the Automatic Stay, the Notice of Deficient Filing, a Request for Notice, and four Notices of Mailing, none of which list The Property as part of Plaintiff Kingsley Palmer's bankruptcy estate.

19. Attached hereto as Exhibit "Q" is a true and accurate copy of the Bankruptcy Schedule filed in Plaintiff Kingsley Palmer's bankruptcy case, which is the first filing in which Plaintiff Kingsley Palmer claimed to have owned The Property.

20. Attached hereto as Exhibit "R" is a true and accurate copy of a SPRINT Report documenting that, on June 27, 2019, a complaining victim with initials "RR" called the New York City Police Department to report that an individual who had recently been served with eviction papers had reentered The Property by breaking a lock.

21. Annexed hereto as Exhibit "S" is a true and accurate copy of Plaintiff Kingsley Palmer's Certificate of Disposition which indicates that, on June 28, 2019, Plaintiff Kingsley Palmer accepted an adjournment in contemplation of dismissal for the charges stemming from his June 27, 2019 arrest.

Dated: New York, New York
October 9, 2020

JAMES E. JOHNSON
Corporation Counsel of the
City of New York
Attorney for City Defendants
100 Church Street
New York, New York 10007
(212) 356-2424

By: /s James R. Murray
James R. Murray
Assistant Corporation Counsel
Special Federal Litigation

To: Karamvir Dahiya, Esq
Attorney for Plaintiffs

CC: Rachel Aghassi
Attorney for Defendant Weintraub

Index Number: 19 CV 5442 (RPK)(CLP)

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James E. Johnson
Corporation Counsel of the City of New York
Attorney for City Defendants
100 Church Street
New York, New York 10007

Of Counsel: James R. Murray
Tel: (212) 356-2372

Due and timely service is hereby admitted.

New York, N.Y. , 2020

..... Esq.

Attorney for.....